

IN THE UNITED STATES DISTRICT COURT
FOR THE SOUTHERN DISTRICT OF MISSISSIPPI
NORTHERN DIVISION

MARTIN ALVAREZ GAMEZ

PETITIONER

VS.

CIVIL ACTION NO. 3:14cv183-DPJ-FKB

UNKNOWN FISHER, Warden

RESPONDENT

REPORT AND RECOMMENDATION

This cause is before the Court on the petition for a writ of habeas corpus pursuant to 28 U.S.C. § 2241 filed by Martin Alvarez Gamez, a federal prisoner. Having considered the petition and response, the undersigned recommends that habeas relief be denied.

Gamez is a federal inmate serving a 78-month sentence for illegal re-entry by a previously deported alien after an aggravated felony conviction, a violation of 8 U.S.C. §§ 1326(a) and (b)(2). He is incarcerated at the Federal Correctional Complex in Yazoo City, Mississippi. In his petition, Gamez challenges the computation of his sentence by the Bureau of Prisons (BOP). Specifically, he claims that the BOP has wrongfully failed to credit him for his time in federal custody from October 1, 2011 until his sentencing on October 1, 2012.

Gamez was indicted on August 3, 2011 and sentenced on October 1, 2012. He was in federal custody during this period. The response to the petition indicates that after Gamez's sentencing, the BOP initially gave him credit for time served from the date of his indictment through only September 30, 2011. Gamez filed an administrative remedy request in which he sought credit through September 30, 2012. The request was initially denied. However, on appeal, the Southeast Regional Office of the BOP determined that

his jail credit had been erroneously calculated and directed the Designations and Sentence Computation Center to correct the error. The sentencing computation documents submitted with the response to the petition indicate that Gamez is now being credited with the entire period from August 3, 2011, through September 30, 2012.¹ Accordingly, his present petition is moot.

For this reason, the undersigned recommends that relief be denied and the petition be dismissed. The parties are hereby notified that failure to file written objections to the proposed findings, conclusions, and recommendation contained within this report and recommendation within fourteen (14) days after being served with a copy shall bar that party, except upon grounds of plain error, from attacking on appeal the proposed factual findings and legal conclusions accepted by the district court. 28 U.S.C. § 636; Fed. R. Civ. P. 72(b); *Douglass v. United Services Automobile Ass'n*, 79 F.3d 1415, 1428-29 (5th Cir. 1996).

Respectfully submitted, this the 18th day of February, 2015.

/s/ F. Keith Ball

UNITED STATES MAGISTRATE JUDGE

¹Gamez is also being credited with two days in July 2011, which represent his time in criminal detention after his arrest.